

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 2666
(JNE/FLN)

This Document Relates to All Actions

**JOINT MOTION REGARDING
CONTINUED SEALING**

Documents have been filed under temporary seal in connection with the following motion:

*Defendants' Motion to Exclude Plaintiffs' General Causation
Medical Experts*

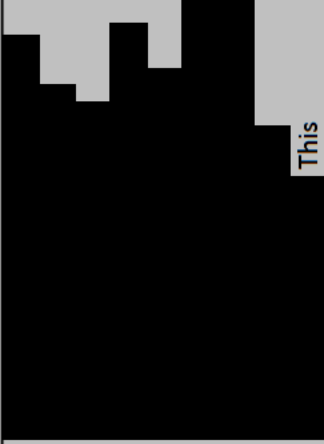
*(Doc.
No. 745)*

Pursuant to LR 5.6, the parties submit this Joint Motion Regarding Continued Sealing.

DKT. NO.	DESCRIPTION OF DOCUMENT	MARK "X" IN APPLICABLE COLUMN			NONPARTY THAT DESIGNATED DOC. CONFIDENTIAL (IF ANY)	REASON WHY DOCUMENT SHOULD REMAIN SEALED OR BE UNSEALED ¹
		Parties Agree Doc. Should Remain Sealed	Parties Agree Doc. Should Be Unsealed	Parties Disagree		
879	Memorandum in Opposition to Defendants' Motion to Exclude Plaintiffs' General Causation Medical Experts			X	Not Applicable.	Plaintiffs' position. The Plaintiffs respectfully maintain there is a strong public interest afforded by both the First Amendment and common law in accessing court proceedings and records. <i>See, e.g., Ass. Press v. District Court</i> , 705 F.2d 1143, 1145 (9 th Cir. 1983); <i>NBC Subsidiary (KNBC-TV), Inc., v. Superior Court</i> , 980 P.2d 337, 358 (Cal. 1999); <i>Mokhiber v. Davis</i> , 537 A.2d 1100, 1107 n.4 (D.C. 1988). As the party attempting to seek restrictions on public right of access to court proceedings, Defendants bear the burden of showing good cause support access restrictions. <i>See Pansy v. Borough of Stroudsburg</i> , 23 F.3d 772, 785-86 (3d Cir. 1994) (noting good cause requires showing disclosure will cause a clearly defined and serious injury, which must be demonstrated with specificity)(quotations omitted). One of the relevant factors in considering

						<p>was raised during oral argument at the hearing on this matter. See Trans. --:--</p> <p>Defendants' position. This document should remain under seal; or at a minimum, the top email (from Mark Morken to Scott Waite on 7/10/15 at 10:32 p.m.) should be redacted. The top email among 3M personnel concerns the company's internal decisionmaking on research. Defendants designated this document as Confidential under PTO 7 because it contains strategic planning information of competitive significance.</p>
882	Plaintiffs' Exhibit (PX) 19 (3MBH00130429--32)		X		Not Applicable.	
883	Plaintiffs' Exhibit (PX) 20 (3MBH01300839--40)			X	Not Applicable.	<p>Plaintiffs' position: The Plaintiffs respectfully submit the public interest in accessing this document is significant. The internal email was sent as the parties were working to schedule depositions of Dr. Harper and other admittedly prominent researchers in the UK in connection with this very litigation, and details Defendants' admission [redacted] which is information very important issues of public health and safety.</p>

						<p>Defendants' position. This document should remain under seal; or at a minimum, the email from Christine Bongards to Mark Morken and others dated 7/22/16 should be redacted. This is an email among 3M personnel concerns the company's internal deliberations on proposed research. Defendants designated this document as Confidential under PTO 7 because it contains internal planning information of competitive significance.</p>
884	Plaintiffs' Exhibit (PX) 31 (3MBH01944765)		X		Not Applicable.	
885	Plaintiffs' Exhibit (PX) 37 (3MBH00050932-33)		X		Not Applicable.	
886	Plaintiffs' Exhibit (PX) 42: Excerpts of 3/7/17 deposition of Albert P. Van Duren		X		Not Applicable.	
887	Plaintiffs' Exhibit (PX) 48 (3MBH00001336)			X	Not Applicable.	<p>Plaintiffs' position. The Plaintiffs respectfully submit the public interest in accessing this document is significant. The internal document contains an admission from executive Mr. Al Van Duren (who was also the 3M corporate designee for the 30(b)(6) deposition taken during this MDL. [REDACTED])</p>

						<p> This admission is information very important to issues of public health and safety.</p> <p>Defendants' position. This document should remain under seal. <i>The Court previously ordered that this document should remain under seal when it was filed at Doc. No. 347. (See Order, Doc. No. 854.)</i> This document is an internal draft of talking points for Arizant sales representatives from 2010. It was labeled "Confidential—Not for external distribution" at the time. It is not a final version whose content may have been publicly disclosed. Defendants designated this document as Confidential under PTO 7 because it contains strategic planning information of competitive significance.</p>
889	Plaintiffs' Exhibit (PX) 58 (3MBH01534469-71)		X			Not Applicable.
890	Plaintiffs' Exhibit (PX) 61 (3MBH00051588)		X			Not Applicable.

891	Plaintiffs' Exhibit (PX) 62 (3MBH00544754-55)				X	Not Applicable.	<p>Plaintiffs' position. The Plaintiffs respectfully submit the public interest in accessing this document is significant. The internal email [REDACTED] which is information very important issues of public health and safety.</p> <p>Defendants' position. This document should remain under seal. <i>The Court previously ordered that this document should remain under seal when it was filed at Doc. No. 385. (See Order, Doc. No. 854.)</i> The document, entitled "Competitive Outline_v1.pptx," reflects internal correspondence among 3M employees relating to strategic planning. Defendants designated this document as Confidential under PTO 7 because it contains strategic planning information of competitive significance.</p>
892	Plaintiffs' Exhibit (PX) 63 (3MBH00555977-78)			X		Not Applicable.	
893	Plaintiffs' Exhibit (PX) 65 (3MBH00048067-85)			X		Not Applicable.	
895	Plaintiffs' Exhibit (PX) 68 (3MBH00554405-06)				X	Not Applicable.	Plaintiffs' position. The Plaintiffs respectfully submit the public interest in accessing this document is

						<p>significant. The internal email [REDACTED]</p> <p>These admissions are contrary to Defendants' public positions today, and is information very important issues of public health and safety.</p> <p>Defendants' position. This document should remain under seal. The document, entitled "The Recrudescence of Obloquy," reflects internal correspondence among 3M employees relating to (i) preparing a response to false statements by Dr. Scott Augustine and (ii) ideas for possible future product development. Defendants designated this document as Confidential under PTO 7 because it contains strategic planning information of competitive significance.</p>
897	Plaintiffs' Exhibit (PX) 72 (3MBH01976220-22)		X		Not Applicable.	
899	Plaintiffs' Exhibit (PX) 74 (3MBH01485746-47)		X		Not Applicable.	

900	Plaintiffs' Exhibit (PX) 75 (3MBH00556461-70)	X	Not Applicable.	<p>Plaintiffs' position. The Plaintiffs respectfully submit the public interest in accessing this document is significant.</p> <p>[REDACTED]</p> <p>Defendants' position. This document should remain under seal. It is a spreadsheet that contains records of communications with 3M customers and potential customers concerning the Bair Hugger system and includes 3M sales representatives' notations concerning their strategies for these accounts. Several of the communications arise directly from competitor Scott Augustine's attempts to get the customers to switch from the Bair Hugger to the HotDog. Disclosure of this internal strategizing regarding customers is likely to cause competitive harm to</p>
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901	Plaintiffs' Exhibit (PX) 76 (3MBH01332558)						<p>3M if publicly disclosed. Defendants designated the content of this document as Confidential under PTO 7 because it contains strategic planning information of competitive significance.</p> <p>Plaintiffs' position. The Plaintiffs respectfully submit the public interest in accessing this document is significant. [REDACTED] and is information very important issues of public health and safety.</p> <p>Defendants' position. This document should remain under seal. This is an internal 3M communication between sales personnel concerning sales strategy relating to a specific customer. Disclosure of this internal sales strategizing is likely to cause competitive harm to 3M if publicly disclosed. Defendants designated the content of this document as Confidential under PTO 7 because it contains strategic planning</p>
							<p>Not Applicable.</p> <p>X</p>

							information of competitive significance.
902	Plaintiffs' Exhibit (PX) 77 (3MBH00144055)	X				Not Applicable.	
903	Plaintiffs' Exhibit (PX) 78 (3MBH01260231-32)		X			Not Applicable.	<p>Plaintiffs' position. The internal email [REDACTED]</p> <p>These admissions are contrary to Defendants' public positions today, and is information very important issues of public health and safety.</p> <p>Defendants' position. This document should remain under seal. This is an internal 3M communication between sales personnel concerning sales strategy relating to a specific customer. Disclosure of this internal sales strategizing is likely to cause competitive harm to 3M if publicly disclosed. Defendants designated the content of this document as Confidential under PTO 7 because it contains strategic planning information of competitive significance.</p>

904	Plaintiffs' Exhibit (PX) 79 (3MBH00799540)		X		Not Applicable.	
905	Plaintiffs' Exhibit (PX) 80 (3MBH01975262-65)			X	Not Applicable.	<p>Plaintiffs' position. The Plaintiffs respectfully submit the public interest in accessing this document is significant. The Plaintiffs respectfully submit the public interest in accessing this (already redacted) document is significant. The email was sent outside the company, and directs the recipient to a website then owned and operated by the Blackwell Burke firm (now registered to 3M directly). The document contains information very important issues of public health and safety.</p> <p>Defendants' position. This document should remain under seal. This is an internal 3M communication among sales personnel concerning discussions with the representatives of the government of South Korea concerning reimbursement for patient warming blankets. Disclosure of this internal sales strategizing is likely to cause competitive harm to 3M if publicly disclosed. Defendants designated the content of this document as Confidential under PTO 7 because it contains strategic planning information of competitive significance.</p>

Dated: November 7, 2017

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Respectfully submitted,

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ⁱ This explanation should be very brief. For example:

1. contains information designated as confidential by a nonparty
2. contains information designated as confidential under a non-disclosure agreement between plaintiff and nonparty
3. contains information designated as confidential under a protective order issued in this case [MDL 2666 Docket No. 39]
4. discovery materials filed in connection with a motion under Fed R. Civ. P. 37
5. reveals trade secrets of defendant
6. reveals proprietary business methods of plaintiff
7. confidential financial records
8. confidential medical records
9. contains termination information regarding former employees of defendant
10. reveals information regarding a minor
11. contains information ordered sealed by the court on DATE [Docket No. XX]